2718.

SUPREME COURT OF THE UNITED STATES.

No. 194.

JOHN H. BENNETT, PLAINTIFF IN ERROR,

vs.

SAMUEL F. BUTTERWORTH.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF TEXAS.

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GIDEON, Printer.

In the district court of the United States, for the district of Texas, December term, 1848.

SAMUEL F. BUTTERWORTH
vs.
JOHN H. BENNETT.

Transcript of the record for the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
District of Texas, to wit.

At a district court of the United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the district of Texas, begun and held at the city of Galveston, in said district, on the first Monday in May, in the year of our Lord one thousand eight hundred and forty-nine; present, the honorable John C. Watrous, judge of the said district; Robert Hughes, esquire, district attorney; Joseph Bates, marshal, and James Love, clerk.

Among other proceedings were the following, to wit:

SAMUEL F. BUTTERWORTH
vs.
JOHN H. BENNETT.

Be it remembered, that heretofore, to wit, on the 28th day of January, in the year of our Lord one thousand eight hundred and forty-eight, the said Samuel F. Butterworth, by Samuel Yerger, his attorney, filed in the district court here his petition, complaining against the said John H. Bennett, in the words and of the tenor following, to wit:

UNITED STATES OF AMERICA,
District of the State of Texas.

February term, 1848.

To the honorable J. C. Watrous, judge of the district court of the United States, for the district of the State of Texas, and which court has also circuit court powers.

The petition of Samuel F. Butterworth, who is a citizen of the State of New York, against John H. Bennett, who is a citizen of the State of Texas, would respectfully represent unto your honor, that heretofore, viz., on the day of March, 1846, at, to wit, in the district aforesaid, he, your petitioner was lawfully seized and possessed of four negroes, slaves for life, whose names and descriptions are as follows, viz: Billy, a negro man, of a dark complexion, aged about 12 years, *years*, of the value of five hundred dollars; Lindsey, a negro man, of

a dark complexion, aged twenty-two years, and of the value of one thousand dollars; Betsy, a mulatto woman, of a light complexion, aged about thirty years, and of the value of eight hundred dollars; and Alexander, a boy of a very light complexion, aged about four years, and of four hundred dollars value, of his own property. And being so possessed, your petitioner, afterwards, to wit, on the day and year aforesaid, in the district aforesaid, casually lost the same out of his possession, and the same, afterwards, to wit, on the day and year aforesaid, in the district aforesaid, came to the possession of the defendant by finding. And your petitioner charges, that the said defendant, well knowing the said negro slaves to be the property of your petitioner, and of right to belong and appertain to him, hath not as yet delivered the above described negroes, or any or either of them, although often requested so to do to your petitioner; but hath hitherto wholly refused so to do, and hath detained, and still doth detain, the same from your petitioner, who says he has received damages, by reason of the detention of the slaves aforesaid, of five thousand dollars.

In consideration of the premises, your petitioner prays your honor to grant him a summons, directed to the marshal of this district, and commanding him to summon the said defendant to be and appear at the next term of this court, to be held for this district, at the city of Galveston, on the first Monday in February next, then and there to answer the allegations contained in this petition; and that, upon the trial of the cause, your petitioner may have a judgment in specie for the said negroes, together with damages for the detention of the same, and also the costs of suit; and such other and further relief grant in the premises as shall be in accordance with right and justice; and, as in duty bound, he will ever pray, &c.

SAMUEL YERGER,
Attorney for Petitioner.

And afterwards, to wit, on the 28th day of January, A. D. 1848, the following summons was issued in the foregoing named cause, in the words and of the tenor following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

The President of the United States of America, to the marshal, or any of his lawful deputies of the district of Texas, greeting:

You are hereby commanded to summon John H. Bennett, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of February next, to answer the petition and complaint of Samuel F. Butterworth, in an action amounting to the sum of three thousand two hundred dollars, of which you will serve the defendant with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and seal of court at the city of Galveston, this 28th day of Janua-
[SEAL.] ry, A. D. 1848, and seventy-second year of the independence of the United States.

THOS. BATES, *Clerk.*

On which summons is the following return of the marshal, to wit:

Rec'd 28th January, 1848, and executed 31st January, 1848, by serving the defendant in person with a true copy of this summons, and an attested copy of petition as furnished by the clerk of this court.

J. H. COCK, *Marshal.*
By E. BATES *Deputy Marshal.*

And afterwards, to wit, on the eighth day of February, A. D. 1848. the following order was made, to wit:

Judgment by default.

SAM'L F. BUTTERWORTH
vs. } 75.
JOHN H. BENNET.

And afterwards, to wit, on the twelfth day of February, A. D. 1848, the following order was made, to wit:

Continued by consent.

SAM'L F. BUTTERWORTH
vs. } 75.
JOHN H. BENNET.

And afterwards, to wit, on the fifteenth day of February, A. D. 1848, the said defendant, by McQueen and Alexander and Atchison, his attorneys, filed his answer to plaintiff's petition in the words following, to wit:

UNITED STATES OF AMERICA,
District of Texas.

SAMUEL F. BUTTERWORTH, plaintiff,
vs.
JOHN H. BENNET, defendant.

And the said defendant in the above entitled cause says that plaintiff's petition is insufficient in law:

1st. Because the plaintiff does not set forth clearly in his petition the cause of action.

2d. Because the property sought to be recovered is not clearly and sufficiently *pres*cribed in the said petition.

3rd. Because plaintiff does not shew any title under which property is claimed or sought to be recovered; and for divers other good causes of demurrer and exceptions to the aforesaid petition, the said defendant

prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

McQUEEN & ALEXANDER & ATCHISON,
Attorneys for defendant.

And the said defendant for answer in the above entitled cause denies the truth of all and singular the allegations in the aforesaid petition of plaintiff, and says that he is not guilty in manner and form as charged thereof against him in said petition, and of this he puts himself upon the country.

McQUEEN & A. & A.
Attorneys defendant.

And for further answer in this behalf, the said defendant denies that plaintiff is the owner of said negroes as charged in said petition, but says that he is the true and lawful owner of the same, as will more fully appear from an award made in favor of John D. Amis by W. W. Humphries and James Hudson Smith, who were selected by agreement of Samuel F. Butterworth, Junius Amis, and John D. Amis, to adjust their affairs, and a bill of sale from said John D. Amis to the defendant in the cause; said award and bill of sale are herewith filed, (A) and (B.)

Wherefore the said defendant prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, and for costs.

McQUEEN, ALEXANDER & ATCHISON.

And the said defendant for further answer in this behalf, according to the statute in such cases made and provided, files his plea of reconvention and set-off, and says that the said plaintiff is justly indebted to him in the just sum of eleven thousand five hundred and fifty dollars, as will fully appear from the said award and other accounts which are herewith filed, marked (C.)

Wherefore the said defendant prays judgment, that he recover the aforesaid sum of and from the plaintiff and costs.

McQUEEN & ALEXANDER & ATCHISON.

A and B, exhibits to answer of defendant, filed on the fifteenth day of February, A. D. 1848, are in the words and figures following, to wit:

NEW ORLEANS, *March* 31*st*, 1846.

We hereby agree to refer all matters of difference between us to the arbitrament of Col. Jas. H. Smith and Doc. W. W. Humphries, and we pledge ourselves to abide their decisions.

SAM'L F. BUTTERWORTH,
JUNIUS AMIS,
JOHN D. AMIS.

NEW ORLEANS, *April 1st*, 1846.

To Messrs. S. F. BUTTERWORTH,
JUNIUS AMIS, and JOHN D. AMIS.

GENTS: The undersigned, to whose arbitrament all matters of difference between yourselves have been referred for final and amicable adjustment, have carefully and deliberately considered all the subjects and points of difference heretofore existing between you, and in view of the advanced age and feeble health of Col. John D. Amis, as well as the relationship which he sustains towards Messrs. Butterworth and Junius Amis, we have arrived at the following conclusions:

1. That Mr. Junius Amis shall, on the first day of October next, deliver to John D. Amis, or order, at the office of Smith and Carroll, in the city of New Orleans, two certain negro men, to wit, Charles and Elijah, (mechanics now in possession of said Junius Amis,) which negroes shall be thenceforward the property of John D. Amis or his assign; and in default of said Junius Amis to deliver the negroes Charles and Elijah aforesaid at the time and place designated, he, the said Junius, shall be bound, jointly with S. F. Butterworth, to pay to John D. Amis the sum of twenty-five hundred dollars within ten days after the first of October, 1846, which sum shall be taken and deemed an equivalent for the negroes aforesaid.

2nd. That the said Butterworth and Junius Amis shall deliver to John D. Amis, or order, on the 1st day of February, 1848, at the plantation of Junius Amis in Louisiana, eleven negroes, six males and five females, between the ages of fifteen and forty-five years, an average of all the hands on said plantation between the ages stated, which average value and selection of eleven negroes shall be ascertained and determined by H. S. Dunlap and Parks Parham; or in case of their death, refusal, or failure to act, by such other person or persons as Mr. Wade Bynam shall appoint for that purpose; but in the selection or division the relative of man and wife shall not be interfered with, and if any difficulty should arise in the progress of division on this account, Col. John D. Amis shall receive only as many negroes as may be chosen for him in reference to the principle stated; and in the event that eleven cannot be gotten in the manner specified, Messrs. Butterworth and Junius Amis shall pay to John D. Amis the sum of five hundred and fifty dollars each, for as many negroes as may constitute the deficiency; the object being to secure to said Amis eleven negroes as above provided, or their equivalent in case there cannot be chosen from the whole number in way and manner above stated.

3dly. That said Butterworth and Junius Amis shall pay to John D. Amis, or order, the sum of five thousand two hundred dollars, as follows, to wit, six hundred dollars cash in hand, nine hundred dollars on the 7th day of January next, five hundred dollars on the first day of May, 1847, five hundred dollars on the 1st day of Sept., 1847, five hundred dollars on the 20th day of Dec., 1847, twenty-two hundred dollars on the 1st day of February, 1848.

4th. That S. F. Butterworth shall dismiss all suits pending against John D. Amis for the recovery of negroes, money, or other property. This requirement is intended to embrace also a suit instituted by John M. Kirk vs. John D. Amis and R. T. Browning, in the circuit court of Lownds county, State of Mississippi, for the recovery or collection of money.

For the prompt and faithful performance of all which, the said Butterworth and Junius Amis shall, within three days after the delivery of this award, execute to John D. Amis or order, their bond or obligation, transferable to such persons as he may designate.

5th. We further award that John D. Amis shall, on his part, convey Mrs. Mary Butterworth all the right, title, and interest he may have supposed he had in law or equity to any portion of the estate formerly owned by himself, and subsequently purchased by S. F. Butterworth. That he, the said John D. Amis, shall deliver up all certificates, papers, or other documents of whatsoever kind he may have pertaining in any wise to Messrs. Butterworth and Junius Amis, or either of them. He shall surrender any and all copies of affidavits of W. D. Amis or other persons, as also the originals of said copies, also any and all contracts in writing, orders for negroes, or other property, together with any [and] all notes he may hold, or may at any time heretofore have had on the said Butterworth and Junius Amis, or either of them, for real estate, money; and, lastly, that he shall express full and entire satisfaction with the settlement contemplated by this award.

Signed and delivered this 2nd day of April, 1846.

W. W. HUMPHRIES,
JAMES HUDSON SMITH.

STATE OF TEXAS, *Galveston county*.

For and in consideration of a track of land this day consigned to me by John H. Bennett, of the city of Galveston, in the State of Texas, situated in Liberty county in said State, on the east side of Trinity river, containing one league of land, I do hereby transfer to the said John H. Bennett, his heirs and assigns, all the right, title, and interest, which is awarded to me by the award made within, and do hereby authorize and empower the said Bennett to receive from the said Butterworth and Junius Amis the negroes mentioned in the within award, and the moneys to be paid by them to me on pursuance thereof; and do also agree that his receipt to them for the said negroes and money shall be as good and binding upon me as if received by me myself. I do also hereby obligate myself to comply with all the terms of said award imposed upon me by the said arbitration, and specified in said award.

In testimony of which I have hereunto set my hand and seal, this 29th day of May, 1846.

JOHN D. AMIS.

Test—SAMUEL YERGER.

And afterwards, to wit, on the 8th day of May, A. D. 1848, the following order was made, to wit:

SAMUEL F. BUTTERWORTH
vs. } 75
JOHN H. BENNETT.

Continued as on plaintiff's affidavit.

And afterwards, to wit, on the 11th day of December, A. D. 1848, being a day of the December term of said district court, the following order was made, to wit:

SAMUEL F. BUTTERWORTH
vs. } 75
JOHN H. BENNETT.

Continued as on affidavit of plaintiff.

And afterwards, on the 5th day of June, A. D. 1849, came the defendant by his attorney, and filed his amended answer to plaintiff's petition, which is in the words and of the tenor following, to wit:

UNITED STATES OF AMERICA, *district of Texas*.

SAMUEL F. BUTTERWORTH, plf.
vs.
JOHN H. BENNETT, dft.

This defendant, John H. Bennett, in this his amendment to his answer made, by leave of the court first had and obtained, most repectfully represents, that whereas, on and before the 31st day of March, A. D. 1846, various differences of account and matters of dispute in reference to real and personal property had arisen and existed between *between* the plaintiffs in this cause, Samuel F. Butterworth, and Junius Amis, his brother-in-law, and John D. Amis his father-in-law, which were found to be impracticable for them to settle, and which they were mutually anxious to settle, adjust, and compromise, without the costs, delay, and public notoriety of suits in the courts of the country; and in order to effect the said settlement, adjustment, and compromise, they mutually and severally agreed upon consideration that they, the said parties, should pledge themselves to abide the decision of two referees or compounders, to be amicably chosen by the said parties; they mutually selected and appointed Col. James H. Smith, and Dr. W. W. Humphries, mutual friends, in whom all the said parties had confidence as such referees or compounders for such purposes as aforesaid, by agreement dated New Orleans, La., 31st day of March, A. D. 1846, signed by the said parties, to wit, Samuel F. Butterworth, Junius Amis, and John D. Amis; and the said Smith and Humphries, being in the manner aforesaid, and for the purpose aforesaid, proceeded to hear the said parties, and examine the matters referred to their consideration and arbitrament, and on the second day of April, A. D. 1846, did make and report to the said parties, Messrs. S. F. Butter-

worth, Junius Amis, and John D. Amis, their decision, adjustment, settlement, and compromise, upon all matters of difference between the said parties, submitted to them in the words and figures to wit:

To Messers. S. F. Butterworth, Junius Amis, and John D. Amis.

GENTS: The undersigned to arbitrament all matters of difference between yourselves, have been referred for final and amicable adjustment, have carefully and deliberately considered all the subjects and points of difference heretofore existing *existing* between you, and in view of the advanced age and feeble health of Col. John D. Amis, as well as the relationship which he sustains towards Messrs. Butterworth and Junius Amis, we have arrived at the following conclusions:

1. That Mr. Junius Amis shall, on the first day of October next, deliver to John D. Amis or order, at the office of Smith & Carrol, in the city of New Orleans, two certain negro men, to wit, Charles and Elijah, (mechanics,) now in the possession of said Junius Amis, which negroes, thenceforward the property of John D. Amis or his assign; and in default of said Junius Amis to deliver the negroes Charles and Elijah aforesaid, at the time and place designated, he, the said Junius Amis, be bound, jointly with S. F. Butterworth, to pay to John D. Amis the sum of twenty-five hundred dollars within ten days after the 1st October, 1846, which sum shall be taken and deemed an equivalent for the negroes aforesaid.

2nd. That said Butterworth and Junius Amis shall deliver to the said John D. Amis, or order, on the 1st day of Feb'y, 1848, at the plantation of Junius Amis, in La., eleven negroes, six males and five females, between the ages of fifteen and forty-five years, an average of all the hands on said plantation between the ages stated, which average, value, and selection of eleven negroes, shall be ascertained and determined by H. L. Dunlap and Parks Parham, or in case of their death, refusal, or failure to act, by such person or persons as Mr. Wade Bynum shall appoint for that purpose; but in the selection or division, the relative of man and wife shall not be interfered with, and if any difficulty should arise in the progress of division on this account, Col. John D. Amis shall receive only as many negroes as may be chosen for him in reference to the *the the* principle stated; and in the event that eleven cannot be gotten in the manner specified, Messrs. Butterworth and Junius Amis shall pay to John D. Amis the sum of five hundred and fifty dollars each, for as many negroes as may constitute the deficiency. The object being to secure to said Amis, eleven negroes as above provided, or their equivalent, in case they cannot be chosen from the whole number in way and manner above stated.

3rd. That said Butterworth and Junius Amis shall pay to John D. Amis, or order, the sum *the sum* of five thousand two hundred dollars, as follows, to wit, six hundred dollars cash in hand; nine hundred dollars on the 7th Jan'y next; five hundred dollars on the 1st day of May, 1847; five hundred dollars on the 1st day of Sept., 1847; five hundred

dollars on the 20th day of Dec., 1847; twenty-two hundred dollars on the 1st day of Feb'y, 1848.

4th. That S. F. Butterworth shall dismiss all suits pending against said John D. Amis for the recovery of negroes, money, or other property. This requirement is intended to embrace also a suit instituted by John M. Kirk vs. John D. Amis and R. T. Browning, in the circuit court of Lowndes, State of Mississippi, for the recovery or collection of money. For the prompt and faithful performance of all which, the said Butterworth and Junius Amis shall, within three days after the delivery of this award, execute to John D. Amis, or order, their bond or obligation, transferable to such persons as he may designate.

5th. We further award that D. Amis shall, on his part, convey to Mrs. Mary Butterworth all the rights, title, and interest he may have, or supposed he had in law or equity, to any portion of the estate formerly owned by himself, and subsequently purchased by S. F. Butterworth. That he, the said John D. Amis, shall deliver up all certificates, papers, or other documents of whatsoever kind he may have, pertaining in any wise to Messrs. Butterworth and Junius [Amis,] or either of them. He shall surrender any and all copies of affidavits of W. D. Amis, or other persons, as also the original of said copies; also any and all contracts in writing, orders for negroes or other property, together with any and [all] notes he may hold, or may at any time have heretofore on the said Butterworth and Junius Amis, or either of them, for real estate, money; and, lastly, that he shall express full and entire satisfaction with the settlement contemplated by this award. Signed and delivered, this 2nd day of April, 1846.

W. W. HUMPHRIES,
JAMES HUDSON SMITH.

And thereupon immediately after the making and delivery of the aforesaid decision, all said parties assented to the same; and the said John D. Amis on his part, in fulfilment of the obligations, and in compliance with the terms of said decision, did make, execute, and deliver, to the said Mary Butterworth, a full and complete conveyance of the rights, title, and interest he had, or supposed he had, in law or equity, to any portion of the estate formerly owned by himself, and subsequently purchased by said Butterworth; and did further do, execute, and perform all other matters, acts, and things provided for him on his part to do and perform, by and according to the terms of said decision, and did then and there notify and request the said Butterworth and said Junius Amis, in consideration of his compliance with the same, to do and perform the obligations incumbent on them, by and according to the stipulations contained in said decision. The said Samuel F. Butterworth and Junius Amis, at the time of said reference, were co-partners in business, and jointly, as well as severally, interested in a large portion of the property which was the subject of dispute and contention between the parties; and the said Butterworth, so being the partner in business of the said Junius Amis, and interested with him, did undertake, promise, and

agree, in consideration of the said decision, and of the compliance with the terms of said decision by the said John D. Amis, to fulfil and execute all the stipulations made obligatory on him, the said Butterworth, by the terms and conditions of the said decision and part performance and fulfilment thereof, did, on or about the 5th day of April, A. D. 1846, pay to the said John D. Amis three hundred dollars cash in hand, being a moiety of the first payment stipulated to be due to him, the said John D. Amis; and did also, on or about the 6th day of April, A. D. 1846, in further execution and performance on his, the said Butterworth, part of the stipulations contained in said decision, did, to wit, at the city of New Orleans, deliver to the said John D. Amis the said four negroes mentioned and described in said plaintiff's petition, and sought to be recovered in this suit; and he, the said Butterworth, did then and there, at the time and place aforesaid, undertake and promise, to and with the said John D. Amis, to comply with all and singular the other conditions and stipulations incumbent on him, the said *the* Butterworth, by the terms of said decision; but the said Butterworth hath hitherto wholly neglected and refused further, in any respect whatever, to comply with the same, though often requested so to do; and on the 29th day of March, A. D. 1846, for and in consideration of a certain tract of land mentioned in a certain assignment, the said John D. Amis did assign and transfer to this defendant, John H. Bennett, all the right, title, and interest which he, the said John D. Amis, had and held in and to the decision above mentioned, as by the said assignment and transfer endorsed on the *the* back of said decision will fully appear, which original decision, with the endorsement thereon, is attached to the deposition of William D. Amis filed in this cause, and is hereby prayed to be made a part of this answer; and the said John D. Amis did also sell and convey to the said John H. Bennett, for a valuable consideration, the four negroes mentioned and described in plaintiff's petition, and sought to be recovered in this suit, which are the same four negroes sold by said Samuel F. Butterworth to the said John D. Amis, as part performance of the aforesaid decision in the manner above described. Wherefore the said John H. Bennet says, the said four negroes are his property, and not the property of the said Samuel F. Butterworth; and of this he puts himself upon the country.

McQUEEN, HARRIS & HOY,
Def'ts Attys.

And the said John H. Bennett further answering says, that the said Samuel F. Butterworth is justly bound unto him, the said John H. Bennett, to fulfil all and singular the conditions and stipulations contained in said decision and rendered obligatory upon him, the said Butterworth to perform, by and according to the terms of said decision aforesaid, which further to perform the said Butterworth wholly refuses to do; wherefore, the said Bennett says that he has a just claim against Butterworth for the sum of ten thousand dollars, and that he hath suffered damages to that amount; and of this he prays judgement.

McQUEEN & HARRIS, A. & A. & HOY.

And afterwards, on the 5th day of June, A. D. 1849, came the plaintiff, by his attorneys, and filed his demurs to the amended answer of defendant, which is in the words following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court, May term, 1849.

SAMUEL F. BUTTERWORTH, plaintiff,
vs.
JOHN H. BENNETT, defendant. } In detenue.—75.

And the plaintiff, by attorney, comes and says he ought not to be barred and precluded from having and maintaining his action aforesaid by reason of any thing in the defendant's first plea in his amended answer, at the present term filed; because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore, he prays judgment, &c.

And for causes of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shows the following, to wit:

1. The said plea attempts to set up, in bar of the plaintiff's action, an award made in the State of Louisiana, yet shows no compliance with the law in said State by the arbitrators in making said award.

2. The award set out in said plea contains no evidence that the arbitrators were sworn as required by law.

3. The said plea does not show that said arbitrators were sworn.

4. And the said plea is, in other respects, defective, informal, and insufficient, &c.

SAM'L YERGER & ROB. HUGHES, *for pl'ff.*

And as to the second plea in said amended answer contained, the said plaintiff says preclude non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore, he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shows the following, to wit:

1. The said plea is no answer to the plaintiff's action.

2. The said plea attempts to set up, in bar of the plaintiff's cause of action, on a tort, damages sustained by the defendant by reason of the failure to perform an agreement.

3. The said plea attempts to set up unascertained damages sustained by reason of the failure to perform an agreement, in bar of plaintiff's action.

4. The said plea claims the benefit of an award by reason of an assignment, when by law the said award is not assignable.

5. And the said plea is, in other respects, defective, informal, and insufficient, &c.

SAM'L YERGER, ROB. HUGHES,
Attorneys for plaintiff.

And afterwards, on the 7th day of June, A. D. 1849, the plaintiff, by his attorneys, filed his replication to the first plea of the defendant contained in his amended answer, which is in the words following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court, May term, 1849.

SAMUEL F. BUTTERWORTH, plaintiff,
vs.
JOHN H. BENNETT, defendant. } In detenue.—75.

And the plaintiff, for replication to the first plea of the defendant contained in the amended answers by him filed at this term, says preclude non, because he says all the parties to the submission and decision in said plea set out did not assent and agree to the same, and the plaintiff did not sell, convey, and deliver the negroes in the petition mentioned in compliance with the terms, or any of the terms, of said decision; and this he prays may be inquired of by the country.

ROB. HUGHES, SAM'L YERGER,
Attorneys for plaintiff.

And thereafter, to wit, on the twenty-fifth day of August, A. D. 1849, being a day of the May term of said court, the following judgment was had in said suit, to wit:

SAMUEL F. BUTTERWORTH
vs.
J. H. BENNETT.

On this day came the parties by their attorneys, and thereupon the demurrer of defendant to plaintiff's petition came on and was argued; and because it seems to the court that the law is for the plaintiff, it is considered by the court that the demurrer be overruled. And the plaintiff's demurrer to defendant's first and second plea in his amended answer, at the present term, also came on and was argued; and because it seems to the court that, on the said first plea, the law is for the defendant, it is considered by the court that the demurrer to the said first plea be overruled, and the plaintiff thereupon replied to said first plea; and because the law on said second plea is for the plaintiff, it is considered that said demurrer to said plea be sustained.

And upon motion of plaintiff, by his attorney, it is ordered that the second and third pleas filed in defendant's answer at a former term be stricken out.

And thereupon came a jury of good and lawful men, to wit, William Alexander, Daniel Marston, Alex'r Moore, John Church, William B.

Gayle, Elisha B. Cogswell, C. C. Herbert, James G. Sheppard, Ephraim McLean, A. C. Crawford, William G. Davis, and William M Sergeant, who, being elected, tried, and sworn, well and truly to try the issue joined, after some time, returned into court the following verdict, to wit:

"We the jury find for the plaintiff twelve hundred dollars, the value of the four negro slaves in suit, with six and a quarter cents damages.

"C. C. HERBERT, *Foreman.*"

And thereupon the plaintiff, by his attorney, in open court, released the said judgment for twelve hundred dollars as aforesaid. It is therefore considered by the court that the plaintiff recover of the defendant the negro man Lindsey, the negro woman Betsy and her child, and the negro boy Billy, the negro slaves in the petition of plaintiff mentioned, and also six and a fourth cents, the damages by the jurors aforesaid assessed, and also his costs about his suit in this behalf expended.

And thereafter, to wit, on the twenty-fifth day of August, A. D. 1849, the following order was made in said suit, to wit:

SAMUEL F. BUTTERWORTH
vs.
J. H. BENNETT.

On this day came on for hearing, by consent of parties, the motion filed by defendant's counsel, to set aside the verdict for reasons therein set forth; after argument heard, the court being sufficiently advised, it is ordered that the motion be overruled.

And afterwards, to wit, on the twenty-fifth day of August, A. D. 1849, the following order was made, to wit:

SAMUEL F. BUTTERWORTH
vs.
J. H. BENNETT.

The counsel of defendant in this cause tendered his bill of exception to the opinion of the court herein, which was signed by the judge, and ordered to be filed of record; which bill of exceptions is in the words following, to wit:

United States District Court, district of Texas—Spring term, 1849.

SAMUEL F. BUTTERWORTH
vs.
JOHN H. BENNETT.

Be it remembered, that on this day, the 25th of August, 1849, the following judgment was rendered in the above named cause, to wit: "On this day came the parties, by their attorneys, and thereupon the demurrer of defendant to plaintiff's petition came on, and was argued, and because it seems to the court that the law is for the plaintiff, it is considered by the court that the demurrer be overruled. And the plain-

tiff's demurrer to defendant's first and second plea in his amended answer at the present term, also came on, and was argued, and because it seems to the court, that on the said first plea the law is for the defendant; it is considered by the court that the demurrer to the said first plea be overruled, and the plaintiffs thereupon replied to said first plea. And because the law on said second plea is for the plaintiff, it is considered that said demurrer to said plea be sustained.

And upon motion of plaintiff, by his attorney, it is ordered that the second and third pleas filed in defendant's answer at a former term be stricken out.

And thereupon came a jury of good and lawful men, to wit, William Alexander, Daniel Marston, Alexander Moore, John Church, William B. Gayle, Elisha B. Cogswell, C. C. Herbert, James G. Sheppard, Ephraim McLean, A. C. Crawford, William G. Davis, and William M. Sergeant, who, being elected, tried, and sworn, well and truly to try the issue joined, after some time returned into court the following verdict, to wit, "We, the jury, find for the plaintiff twelve hundred dollars, the value of the four negro slaves in suit, with six and a quarter cents damages; C. C. Herbert, foreman." And thereupon the plaintiff, by his attorney, in open court, released the said judgment for twelve hundred dollars as aforesaid. It is, therefore, considered by the court that the plaintiff recover of the defendant the negro man Lindsey, the negro woman Betsy and her child, and the negro boy Billy, the negro slaves in the petition of plaintiff mentioned, and also six and a fourth cents, the damages by the jurors aforesaid assessed, and also his costs about his suit in this behalf expended.

To the entry of said judgment the defendant objects, on the ground that the same is not in accordance with the verdict of the jury; but the objection was by the court overruled. The said verdict is in words and figures as follows:

"We, the jury, find for the plaintiff twelve hundred dollars, the value of the four negro slaves in the suit, with six and quarter cents damages." And the motion of the defendant to set aside said verdict, and for a new trial, having been heard, was by the court overruled. To which opinion of the court, as well in causing said judgment to be sustained, as in refusing to set aside said verdict, the defendant excepts, and tenders this his bill of exceptions, which is signed, sealed, and made a part of the record. JOHN C. WATROUS.

And afterwards, to wit, on the 28th day of August, anno domini 1849, the following writ of error was sued out by the defendant in said suit, to wit:

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judge of the district court of the United States for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between Samuel F. Butterworth and John H. Bennett, a manifest error

hath happened, to the great damage of the said John H. Bennett, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this the twenty-seventh day of August, anno domini one thousand eight hundred and forty-nine.

[SEAL.]

JAMES LOVE,
Clerk of the U. S. district court for the district of Texas.

Allowed.

JOHN C. WATROUS,
U. S. Judge, District of Texas.

And the following bond for writ of error was given, and filed 28th August, anno domini 1849, to wit:

JOHN H. BENNETT, plaintiff,
vs.
SAMUEL F. BUTTERWORTH, defendant. } In error.

Know all men by these presents, that we, John H. Bennett, Henry Hubbell, and E. P. Hunt, are held and firmly bound unto the above named Samuel F. Butterfield, in the sum of four thousand dollars, to be paid to the said Samuel F. Butterworth, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and all and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of August, A. D. 1849.

Whereas the above named John H. Bennett hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the United States district court for the district of Texas: Now, therefore, the condition of this obligation is such, that if the above named John H. Bennett shall prosecute his writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

JOHN H. BENNETT, [SEAL.]
HENRY HUBBELL, [SEAL.]
E. P. HUNT. [SEAL.]

Sealed and delivered in presence of—
A. F. JAMES,
THOMAS C. BUNKER.

THE STATE OF TEXAS, *county of Galveston*.

Before me, Alfred F. James, chief justice of the county of Galveston, this day personally appeared John H. Bennett, Henry Hubbell, and E. P. Hunt, all to me known, who severally acknowledged the within and foregoing instrument of writing to be their respective act and deed, for the consideration and purposes therein expressed.

Given under my hand and impress of the seal of the county court, this 27th August, A. D. 1849.

[SEAL.] A. F. JAMES, *Chief Justice*.

I approve the within bond, and certify that the securities are good.

JOHN C. WATROUS,
U. S. Judge, D. T.

And afterwards, on the 28th day of August, A. D. 1849, was filed the following citation, to wit:

THE UNITED STATES OF AMERICA:

The President of the United States, to Samuel F. Butterworth, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the United States district court for the district of Texas, wherein John H. Bennett is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the United States, this twenty-seventh day of August, A. D. one thousand eight hundred and forty-nine.

JOHN C. WATROUS,
U. S. Judge, D. T.

The following endorsement is on said writ, to wit:

I acknowledge service of this citation.

ROB. HUGHES,
Att'y for Butterworth.

UNITED STATES DISTRICT COURT,
District of Texas, ss.

SAMUEL F. BUTTERWORTH, plaintiff,
vs.
JOHN H. BENNETT, defendant.

I, James Love, clerk of the United States district court for the district of Texas, certify, that the foregoing pages, numbered from one to twenty-five inclusive, contain a true copy of the record and all the proceedings had in the above entitled cause.